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KYSC1973-SC-1057-02

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REPLY BRIEF (P)

MAR 23 REC

MAR 23 REC

SUPREME COURT OF KENTUCKY

FILE No. 73-1057

JAMES H. POTTER - - - - - *Appellant*

Vs:

JENNY POTTER - - - - - *Appellee*

APPEAL FROM GREENUP CIRCUIT COURT
HONORABLE OSCAR SAMMONS, *Judge*

APPELLEE'S RESPONSE TO APPELLANT'S PETITION FOR REHEARING

FILED

MAR 23 1976

MARTIN LANE COLLINS
CLERK
SUPREME COURT

PHILLIP BRUCE LESLIE
W. TERRY McBRAYER
Braden Building
Greenup, Kentucky 41144
Attorneys for Appellee

Pursuant to RCA 1.250, copies of Appellee's Response to Appellant's Petition for Rehearing have been served upon the Appellant by mailing a true and correct copy thereof to Creech, Hogg and Williams, 1107 Second National Bank Building, Ashland, Kentucky 41101, Attorneys for Appellant and to the Trial Judge, Hon. Oscar Sammons, Courthouse, Greenup, Kentucky, this 22nd day of March 1976.


PHILLIP BRUCE LESLIE
One of Attorney's for Appellee

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SUPREME COURT OF KENTUCKY

FILE No. 73-1057

JAMES H. POTTER - - - - - *Appellant*

Vs:

JENNY POTTER - - - - - *Appellee*

APPEAL FROM GREENUP CIRCUIT COURT
HONORABLE OSCAR SAMMONS, *Judge*

APPELLEE'S RESPONSE TO APPELLANT'S PETITION FOR REHEARING

MAY IT PLEASE THE COURT:

The Supreme Court was correct in affirming the judgment of Trial Court and no relevant facts were overlooked nor was inapplicable law applied.

Rule 1.350(b) of the Rules of the Supreme Court states a Petition for Rehearing "will be granted only when it appears that the Court has overlooked a material fact in the record, or a controlling statute or decision, or has misconceived the issues presented on appeal or the law applicable thereto."

The Appellant is once again asking the Court to review this case simply on the facts. A close review of the entire record will reveal there was ade-

quate testimony supported by applicable law to affirm the judgment of both Courts herein.

The Appellant states the Trial Court increased maintenance for an indefinite period contrary to the intent of KRS 403.200(2) and did not apply the factors listed in KRS 403.200 (A.F.).

The Appellee contends this is improper argument at this stage of the proceedings. The authority cited by the Appellant is the exact authority cited in the original Brief for Appellant and the issues raised in this Petition are the same issues previously decided by both the Trial Court and the Court herein.

As previously stated by the Appellee, the Appellant is really asking this Court to have sympathy on his plight and to disregard all testimony save that which was favorable to the Appellant.

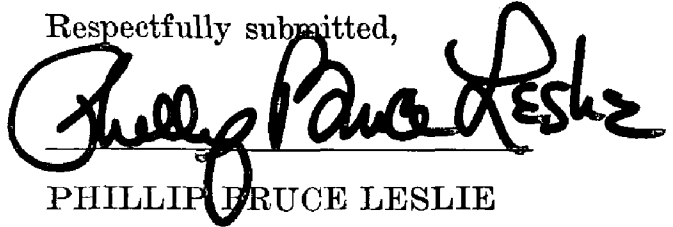
The Appellee urges this Court to consider carefully its own rule concerning Petitions for Rehearing. The Appellee strongly feels this is extra ordinary relief and should be granted only when there has been a gross oversight made in the rendering of an Opinion. NO such mistake is present in the instant case.

Each and every question raised by the Appellant in his Petition for Rehearing was raised in the Briefs and due consideration has already been given these arguments. No new or controlling law is cited by the Appellant nor does he cite any facts or issues which

were overlooked by the Court in rendering its original Opinion.

The Appellee urges this Court to overrule the Appellant's Petition for Rehearing and issue a mandate forthwith.

Respectfully submitted,

A handwritten signature in black ink, reading "Phillip Bruce Leslie", written over a horizontal line.

PHILLIP BRUCE LESLIE
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Greenup, Kentucky 41144

Counsel for Appellee

APPENDIX

SUPREME COURT OF KENTUCKY

FILE No. 73-1057

February 6, 1976

JAMES H. POTTER - - - - - *Appellant*

Vs:

JENNY POTTER - - - - - *Appellee*

APPEAL FROM THE GREENUP
CIRCUIT COURT

HONORABLE OSCAR SAMMONS, *Judge*

No. 5607

MEMORANDUM OPINION PER CURIAM

AFFIRMING

There was a conflict in the evidence as to the source of the money that went into buying the initial land and building the house, and as to the wife's ability to earn a living in employment. This Court is not persuaded that the trial court's findings were clearly erroneous, nor that there was error as concerns the duration of the maintenance award.

The judgment is affirmed.

All concur.

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